

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8

2006 APR 19 AM 11:35

FILED
EPA REGION VIII
HEARING CLERK

IN THE MATTER OF:)	AGREEMENT FOR RECOVERY OF
)	RESPONSE COSTS
Intermountain Waste Oil Refinery Site)	
Bountiful, Utah)	U.S. EPA Region 8
)	Docket No. CERCLA-08-2006-0005
)	
Intermountain Oil Company)	PROCEEDING UNDER SECTION
SETTLING PARTY)	122(h)(1) OF CERCLA
)	42 U.S.C. § 9622(h)(1)

I. JURISDICTION

1. This Agreement is entered into pursuant to the authority vested in the Administrator of the U.S. Environmental Protection Agency ("EPA") by Section 122(h)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. § 9622(h)(1), which authority has been delegated to the Regional Administrators of the EPA by EPA Delegation No. 14-14-D and further delegated, through a series of intermediate delegations, to the undersigned representatives of EPA. This Agreement is also entered into pursuant to the authority of the Attorney General of the United States to compromise and settle claims of the United States, which authority, in the circumstances of this settlement, has been delegated to the Deputy Chiefs of the Environmental Enforcement Section of the U.S. Department of Justice.

2. This Agreement is made and entered into by EPA and Intermountain Oil Company ("Settling Party"). Settling Party consents to and will not contest the authority of the United States to enter into this Agreement or to implement or enforce its terms.

II. BACKGROUND

3. This Agreement concerns the Intermountain Waste Oil Refinery Site ("Site") located in Bountiful, Utah. EPA alleges that the Site is a facility as defined by Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

4. In response to the release or threatened release of hazardous substances at or from the Site, EPA undertook response actions at the Site pursuant to Section 104 of CERCLA, 42 U.S.C. § 9604, and will undertake additional response actions in the future. Various operations reportedly occurred at the Site. The Site was originally part of a brick manufacturing facility that encompassed about 20 acres. In the 1950s, an asphalt business was operated at the Site. Settling

Party began operations at the Site in 1957 and continued for approximately 35 years before closing in May 1993. Settling Party originally began operation as a trucking business that hauled various petroleum products to customers from the Site. During the 1970s the oil blending business commenced on the property. The operation involved blending green bottoms, purportedly a fraction of crude oil with diesel fuel, which was sold for dust control at coal mines. Over the subsequent years, used oil was treated onsite and sent to cement facilities for use as fuel in cement kilns. Tanks used in the operations had an unlined secondary surface impoundment. Waste sludge produced in the operations was reportedly disposed of in an offsite landfill, and wastewater that may have remained after the treatment process was boiled off at the Site.

The Settling Party began dismantling the refinery in 1993. Some of the waste was consolidated into a waste pile of approximately 100 cubic yards, located on the eastern portion of the Site. The remainder of the Site was covered with a couple of inches of gravel-type backfill.

The Site was proposed for listing on the National Priorities List of Superfund Sites ("NPL") in October 1999 after trichloroethylene (or trichloroethene) ("TCE"), Cis-1,2-Dichloroethene ("*cis*-1,2-DCE"), and 1,1-Dichloroethane ("1,1-DCA") were detected in groundwater underlying the Site at concentrations exceeding Maximum Contaminant Levels ("MCLs"). The NPL listing was finalized on May 11, 2000.

In August 2001, EPA conducted a time-critical removal action to address conditions that presented an imminent and substantial endangerment to human health and the environment, including removal and disposal of numerous containers and their contents, laboratory chemicals, and the contents of several above ground tanks.

EPA conducted a Remedial Investigation ("RI") at the Site from December of 2001 through June 2004. For the RI, the Site was subdivided into Operable Unit 1 ("OU1") and Operable Unit 2 ("OU2"). OU1 addressed the near-surface soil contamination and potential sources, including tanks, drums, and containers at the Site; while OU2 addressed the vadose zone and groundwater contamination.

The OU1 RI identified the area east of the laboratory as containing high concentrations of total petroleum hydrocarbons (TPH) and volatile organic compounds ("VOCs") in the zero to 24-inch ("in") below ground surface ("bgs") soils. In November 2002, EPA signed the record of decision ("ROD") for OU1. The selected remedy described in the OU1 ROD involves the establishment of a building requirement to prevent contaminated soil vapors from entering buildings and removal of the underground storage tank (UST). Pursuant to a unilateral administrative order, the Settling Parties established a land use control in 2004 to meet the need for restrictions on building on the Site.

In 2003, the UST was removed as part of the OU2 RI. The human health risk assessment identified TCE, cis-1, 2-DCE, acetophenone, bis (2-ethylhexyl) phthalate, and manganese as contaminants of potential concern ("COPCs") in groundwater. After quantifying the risk presented at the site, the only contaminant of concern ("COC") in the Site groundwater is TCE. TCE is the only contaminate found above health based levels of concern.

In May 2004, EPA initiated a treatability study at the Site to evaluate four groundwater treatment alternatives to select the preferred option and provide data for long-term full treatment. The OU2 ROD was signed on August 2nd, 2005. The Selected Remedy for OU2 was dual phase extraction ("DPE") and groundwater extraction and treatment. In addition to addressing the contaminated groundwater, the remedy includes the removal of about 25 one- and five-gallon containers in the garage and the requirement for land use controls to prevent the installation of groundwater wells until MCLs have been met.

5. In performing response actions at the Site, EPA has incurred response costs and will incur additional response costs in the future.

6. EPA alleges that Settling Party is a responsible party pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), and is jointly and severally liable for response costs incurred and to be incurred at the Site.

7. EPA has reviewed the Financial Information submitted by Settling Party to determine whether Settling Party is financially able to pay response costs incurred and to be incurred at the Site. Based upon this Financial Information, EPA has determined that Settling Party has a limited financial ability to pay for response costs incurred and to be incurred at the Site.

8. EPA and Settling Party recognize that this Agreement has been negotiated in good faith and that this Agreement is entered into without the admission or adjudication of any issue of fact or law. The actions undertaken by Settling Party in accordance with this Agreement do not constitute an admission of any liability. Settling Party does not admit, and retains the right to controvert in any subsequent proceedings other than proceedings to implement or enforce this Agreement, the validity of the facts or allegations contained in this Section.

III. PARTIES BOUND

9. This Agreement shall be binding upon EPA and upon Settling Party and its successors and assigns. Any change in ownership or corporate or other legal status of Settling Party, including, but not limited to, any transfer of assets or real or personal property, shall in no way alter Settling Party's responsibilities under this Agreement. Each signatory to this Agreement certifies that he or she is authorized to enter into the terms and conditions of this Agreement and to bind legally the party represented by him or her.

IV. STATEMENT OF PURPOSE

10. By entering into this Agreement, the mutual objective of the Parties is to avoid difficult and prolonged litigation by allowing Settling Party to make a cash payment to address its alleged civil liability for the Site as provided in the Covenant Not to Sue by EPA in Section VIII, subject to the Reservations of Rights by EPA in Section IX.

V. DEFINITIONS

11. Unless otherwise expressly provided herein, terms used in this Agreement which are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Agreement or in any appendix attached hereto, the following definitions shall apply:

- a. "Agreement" shall mean this Agreement and any attached appendices. In the event of conflict between this Agreement and any appendix, the Agreement shall control.
- b. "CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. § 9601, *et seq.*
- c. "Day" shall mean a calendar day. In computing any period of time under this Agreement, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next working day.
- d. "EPA" shall mean the United States Environmental Protection Agency and any successor departments, agencies, or instrumentalities of the United States.
- e. "Fair Market Value" shall, except in the event of a foreclosure or transfer by deed or other assignment in lieu of foreclosure, mean the price at which the Property would change hands between a willing buyer and a willing seller under actual market conditions, neither being under any compulsion to buy or to sell and both having reasonable knowledge of relevant facts. In the event of a transfer by foreclosure, "Fair Market Value" shall mean the amount obtained at the foreclosure sale. In the event of a transfer by a deed or other assignment in lieu of foreclosure, "Fair Market Value" shall mean the balance of Settling Party's mortgage on the Property at the time of the transfer.
- f. "Financial Information" shall mean those financial documents and financial information submitted to EPA by Intermountain Oil Company on April 26, 2000 and December 6, 2003, in response to requests for information by EPA under Section 104(e) of CERCLA.
- g. "Interest" shall mean interest at the rate specified for interest on investments of the Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded on October 1 of each year, in accordance with 42 U.S.C. § 9607(a). The applicable rate of interest shall be the rate in effect at the time the interest accrues. The rate of interest is subject to change on October 1 of each year.
- h. "Net Sales Proceeds" shall mean the total value of all consideration received by Settling Party for each Transfer (or if the consideration cannot be determined, the Fair Market Value of the Property) less: i) the balance of Settling Party's mortgage on the Property, ii) closing costs limited to those reasonably incurred and actually paid by Settling Party associated with the Transfer of the Property, and iii) federal and State taxes owed on the

proceeds. Settling Party shall provide EPA with documentation sufficient to show the total value of all consideration received by Settling Party for each Transfer (or if the consideration cannot be determined, the Fair Market Value of the Property) at the time of each Transfer, the amount of the proceeds of the Transfer, and the amounts corresponding to items i) through iii) above. This documentation shall include, but not be limited to, the report of an appraisal paid for by Settling Party, performed by an appraiser satisfactory to the Parties, upon appraisal assumptions satisfactory to the Parties. The documentation must also include, either as part of the report or separately, i) a tax statement showing the assessed valuation of the Property for each of the three years immediately preceding the Transfer, and ii) a schedule showing all outstanding indebtedness on the Property.

i. "Paragraph" shall mean a portion of this Agreement identified by an Arabic numeral or a lower case letter.

j. "Parties" shall mean EPA and Settling Party.

k. "Property" shall mean that portion of the Site that is owned by Settling Party. The Property is located at 995 South 500 West in Bountiful, Davis County, Utah, and is designated by the following property description: Beginning at a point on the West line of Meadow Lane Subdivision, a subdivision of part of Block K, North Mill Creek Plat, Bountiful Townsite Survey, said point being 527.74 ft. West from the Northeast corner of Lot 9, Block K, of said Plat, then South 205 ft.; thence West 285 ft.; thence North 205 ft.; thence East 285 ft. to the point of beginning. Containing 1.34 acres more or less. ALSO a 30 ft. right-of-way on the South side of the tract of land immediately adjacent West of the above described property commencing at a point 812.74 ft. West and 205 ft. South from the Northeast corner of Lot 9, Block K Meadow Lane Subdivision, a subdivision of part of Block K, North Mill Creek Plat, Bountiful Townsite Survey; then West 267.05 ft. to the East line of a certain highway; then North 30 ft. along said highway; then East 267.05 ft.; thence South 30 ft. to the point of beginning.

l. "RCRA" shall mean the Solid Waste Disposal Act, as amended, 42 U.S.C. §§ 6901, *et seq.* (also known as the Resource Conservation and Recovery Act).

m. "Section" shall mean a portion of this Agreement identified by a Roman numeral.

n. "Settling Party" shall mean Intermountain Oil Company.

o. "Site" shall mean the Intermountain Waste Oil Refinery Superfund site, encompassing approximately 2 acres, located at 995 South 500 West in Bountiful, Davis County, Utah and generally shown on the map included in Appendix A.

p. "Transfer" shall mean each sale, assignment, transfer or exchange by Settling Party (or its successors or heirs) of the Property, or any portion thereof, or of the entity owning the Property, where title to the Property (or any portion or interest thereof) or to the entity owning the Property: i) is transferred and Fair Market Value is received in consideration, or ii) is

transferred involuntarily by operation of law, including foreclosure and its equivalents following default on the indebtedness secured, in whole or in part, by the Property, including, but not limited to, a deed or other assignment in lieu of foreclosure. A Transfer does not include a transfer pursuant to an inheritance or a bequest.

q. "United States" shall mean the United States of America, including its departments, agencies, and instrumentalities.

VI. PAYMENT OF RESPONSE COSTS

12. Payment of Proceeds of Sale of Property. Settling Party agrees that it will not sell, assign, transfer or exchange the Property except by means of a Transfer. Settling Party shall use its best efforts to Transfer the Property within 6 months of the effective date of this Agreement.

a. Settling Party shall pay to EPA 100% of the Net Sales Proceeds of the Transfer of the Property. Payment shall be made within 30 days of the effective date of the Transfer of the Property.

b. Payment shall be made by certified or cashier's check made payable to "EPA Hazardous Substance Superfund" or by Electronic Funds Transfer ("EFT"). The payment shall be accompanied by a statement identifying the name and address of the parties making payment, the Site name (Intermountain Waste Oil Refinery Site), the EPA Region and Site/Spill ID Number (SSID #08-5G), and the EPA docket number for this action. Payment shall be sent to:

Regular Mail: Mellon Bank
EPA Region 8
Attn: Superfund Accounting
Lockbox 360859
Pittsburgh, Pennsylvania 15251-6859

Express Mail: EPA 360859
Mellon Client Service Center, Room 154-670
500 Ross Street
Pittsburgh, Pennsylvania 15262-0001

Wire transfers shall be sent to the Federal Reserve Bank in New York, New York, with the following information:

ABA=021030004
TREAS NYC/CTR/
BNF=/AC-68011008

At the time of payment, the Settling Parties shall send notice that such payment has been made to the following individuals:

Martha Walker, Director 8TMS-F
Financial Management Program
U.S. EPA Region 8
999 18th Street, Suite 300
Denver, Colorado 80202-2466

Carol Pokorny 8ENF-RC
U.S. EPA Region 8
999 18th Street, Suite 300
Denver, Colorado 80202-2466

c. At least 30 days prior to any such Transfer, Settling Party shall notify EPA of the proposed Transfer, which notice shall include a description of the property to be sold, the identity of the purchaser, the terms of the Transfer, the consideration to be paid, and a copy of the Transfer agreement. The proposed sales price must be at least equal to the Fair Market Value of the Property based upon an appraisal obtained within 1 year of the Transfer. Settling Party shall notify EPA of the completion of the Transfer within 10 days of the date of closing and shall include with such notification a copy of the closing binder, including final executed documentation for the conveyance and a work sheet setting forth the Net Sales Proceeds and the amount payable to EPA.

d. In the event of a Transfer of the Property or any portion thereof, Settling Party shall continue to be bound by all the terms and conditions, and subject to all the benefits, of this Agreement, except if EPA and Settling Party modify this Agreement in writing.

e. Until the Property is Transferred, Respondents shall:

- i. Pay all taxes and assessments due on the Property to any federal, state or local government;
- ii. Maintain the Property in its present condition; provided, however, that Respondents may alter the condition of the Property if required to do so by law;
- iii. Not grant, suffer, or permit any mortgage, lien, or other encumbrance upon the Property.
- iv. Beginning on the first anniversary date of the effective date of this Order, Respondents shall provide certification that it has complied with the terms of this Paragraph.

13. The total amount to be paid by Settling Party pursuant to Paragraph 12 shall be deposited by EPA in the Intermountain Waste Oil Refinery Special Account within the EPA Hazardous Substance Superfund to be retained and used to conduct or finance response actions at

or in connection with the Site, or to be transferred by EPA to the EPA Hazardous Substance Superfund.

VII. FAILURE TO COMPLY WITH AGREEMENT

14. Interest on Late Payments. If Settling Party fails to make any payment required by Paragraph 12 by the required due date, Interest shall continue to accrue on the unpaid balance through the date of payment

15. Stipulated Penalty

a. If any amounts due under Paragraph 12 are not paid by the required date, Settling Party shall be in violation of this Agreement and shall pay to EPA, as a stipulated penalty, in addition to the Interest required by Paragraph 14, \$ 500 per violation per day that such payment is late.

b. Stipulated penalties are due and payable within 30 days of the date of demand for payment of the penalties by EPA. All payments to EPA under this Paragraph shall be identified as "stipulated penalties" and shall be made by certified or cashier's check made payable to "EPA Hazardous Substance Superfund." Payment shall be made in the manner proscribed in Section VI (payment of Response Costs).

c. At the time of each payment, Settling Party shall send notice that such payment has been made to EPA in accordance with Section XIV (Notices and Submissions). Such notice shall identify the Region and Site-Spill ID # 08-5G and the EPA Docket Number for this action.

d. Penalties shall accrue as provided above regardless of whether EPA has notified Settling Party of the violation or made a demand for payment, but need only be paid upon demand. All penalties shall begin to accrue on the day after payment is due and shall continue to accrue through the date of payment. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Agreement.

16. In addition to the Interest and Stipulated Penalty payments required by this Section and any other remedies or sanctions available to the United States by virtue of Settling Party's failure to comply with the requirements of this Agreement, if Settling Party fails or refuses to comply with any term or condition of this Agreement, it shall be subject to enforcement action pursuant to Section 122(h)(3) of CERCLA, 42 U.S.C. § 9622(h)(3). If the United States brings an action to enforce this Agreement, Settling Party shall reimburse the United States for all costs of such action, including but not limited to costs of attorney time.

17. Notwithstanding any other provision of this Section, EPA may, in its unreviewable discretion, waive payment of any portion of the stipulated penalties that have accrued pursuant to this Agreement. Settling Party's payment of stipulated penalties shall not excuse Settling Party from payment as required by Paragraph 12 or from performance of any other requirements of this Agreement.

or in connection with the Site, or to be transferred by EPA to the EPA Hazardous Substance Superfund.

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b. Stipulated penalties are due and payable within 30 days of the date of demand for payment of the penalties by EPA. All payments to EPA under this Paragraph shall be identified as "stipulated penalties" and shall be made by certified or cashier's check made payable to "EPA Hazardous Substance Superfund." Payment shall be made in the manner proscribed in Section VI (payment of Response Costs).

c. At the time of each payment, Settling Party shall send notice that such payment has been made to EPA in accordance with Section XIV (Notices and Submissions). Such notice shall identify the Region and Site-Spill ID # 08-5G and the EPA Docket Number for this action.

d. Penalties shall accrue as provided above regardless of whether EPA has notified Settling Party of the violation or made a demand for payment, but need only be paid upon demand. All penalties shall begin to accrue on the day after payment is due and shall continue to accrue through the date of payment. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Agreement.

16. In addition to the Interest and Stipulated Penalty payments required by this Section and any other remedies or sanctions available to the United States by virtue of Settling Party's failure to comply with the requirements of this Agreement, if Settling Party fails or refuses to comply with any term or condition of this Agreement, it shall be subject to enforcement action pursuant to Section 122(h)(3) of CERCLA, 42 U.S.C. § 9622(h)(3). If the United States brings an action to enforce this Agreement, Settling Party shall reimburse the United States for all costs of such action, including but not limited to costs of attorney time.

17. Notwithstanding any other provision of this Section, EPA may, in its unreviewable discretion, waive payment of any portion of the stipulated penalties that have accrued pursuant to this Agreement. Settling Party's payment of stipulated penalties shall not excuse Settling Party from payment as required by Paragraph 12 or from performance of any other requirements of this Agreement.

VIII. RELEASE OF NOTICE OF FEDERAL LIEN

18. Within 5 days after receipt of payment under Paragraph 12a, EPA shall provide to Settling Party a Release of Notice of Federal Lien. The Release of Notice of Federal Lien shall release the Notice of Federal Lien filed on October 10, 2000 in the Recorder's Office of Davis County Utah, recorded at E1617667, Book 2700, Page 111 and shall not release any other lien or encumbrance which may exist upon the Property.

IX. COVENANT NOT TO SUE BY EPA

19. Except as specifically provided in Section X (Reservations of Rights by EPA), EPA covenants not to sue or to take administrative action against Settling Party pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607(a), with regard to the Site. With respect to present and future liability, this covenant shall take effect upon receipt by EPA of all amounts required by Section VI (Payment of Response Costs) and any amount due under Section VII (Failure to Comply with Agreement). This covenant not to sue is conditioned upon the satisfactory performance by Settling Party of its obligations under this Agreement and any amount due under Section VII (Failure to Comply with Agreement). In addition, this covenant not to sue is conditioned on Settling Party cooperating to the full extent of its legal abilities in (a) any effort by EPA to implement the RODS; and (b) any investigation EPA conducts into the generators and transporters who shipped material to the Site. This covenant not to sue is also conditioned upon the veracity and completeness of the Financial Information provided to EPA by Settling Party. If the Financial Information is subsequently determined by EPA to be false or, in any material respect, inaccurate, Settling Party shall forfeit all payments made pursuant to this Agreement and the covenant not to sue shall be null and void. Such forfeiture shall not constitute liquidated damages and shall not in any way foreclose EPA's right to pursue any other causes of action arising from Settling Party's false or materially inaccurate information. This covenant not to sue extends only to Settling Party and does not extend to any other person.

X. RESERVATIONS OF RIGHTS BY EPA

20. EPA reserves, and this Agreement is without prejudice to, all rights against Settling Party with respect to all matters not expressly included within the Covenant Not to Sue by EPA in Paragraph 19. Notwithstanding any other provision of this Agreement, EPA reserves all rights against Settling Party with respect to:

- a. liability for failure of Settling Party to meet a requirement of this Agreement;
- b. criminal liability;
- c. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments;

d. liability, based upon Settling Party's ownership or operation of the Site, or upon Settling Party's transportation, treatment, storage, or disposal, or the arrangement for the transportation, treatment, storage, or disposal, of a hazardous substance or a solid waste at or in connection with the Site, after signature of this Agreement by Settling Party;

e. liability arising from the past, present, or future disposal, release or threat of release of a hazardous substance, pollutant, or contaminant outside of the Site.

21. Notwithstanding any other provision of this Agreement, EPA reserves, and this Agreement is without prejudice to, the right to reinstitute or reopen this action, or to commence a new action seeking relief other than as provided in this Agreement, if the Financial Information provided by Settling Party, or the financial certification made by Settling Party in Paragraph 31(b), is false or, in any material respect, inaccurate.

22. Nothing in this Agreement is intended to be nor shall it be construed as a release, covenant not to sue, or compromise of any claim or cause of action, administrative or judicial, civil or criminal, past or future, in law or in equity, which EPA may have against any person, firm, corporation or other entity not a signatory to this Agreement.

XI. COVENANT NOT TO SUE BY SETTling PARTY

23. Settling Party agrees not to assert any claims or causes of action against the United States, or its contractors or employees, with respect to the Site or this Agreement, including but not limited to:

a. any direct or indirect claim for reimbursement from the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, based on Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;

b. any claim arising out of response actions at or in connection with the Site, including any claim under the United States Constitution, the Utah Constitution, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended, or at common law; or

c. any claim against the United States pursuant to Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, relating to the Site.

Except as provided in Paragraph 25 (Waiver of Claims) and Paragraph 28 (Waiver of Claim-Splitting Defenses), these covenants not to sue shall not apply in the event the United States brings a cause of action or issues an order pursuant to the reservations set forth in Paragraph 19(c) - (e), but only to the extent that Settling Parties' claims arise from the same response action or response costs that the United States is seeking pursuant to the applicable reservation.

24. Nothing in this Agreement shall be deemed to constitute approval or preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. 300.700(d).

25. Settling Party agrees not to assert any claims or causes of action that it may have for all matters relating to the Site, including for contribution, against any other person. This waiver shall not apply with respect to any defense, claim, or cause of action that a Settling Party may have against any person if such person asserts a claim or cause of action relating to the Site against such Settling Party.

XIII. EFFECT OF SETTLEMENT/CONTRIBUTION PROTECTION

26. Except as provided in Paragraph 25, nothing in this Agreement shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Agreement. EPA reserves any and all rights (including, but not limited to, any right to contribution), defenses, claims, demands, and causes of action that it may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a Party hereto.

27. The Parties agree that Settling Party is entitled, as of the effective date of this Agreement, to protection from contribution actions or claims as provided by Sections 113(f)(2) and 122(h)(4) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and 9622(h)(4), for "matters addressed" in this Agreement. The "matters addressed" in this Agreement are all response actions taken or to be taken and all response costs incurred or to be incurred, at or in connection with the Site, by the United States or any other person. The "matters addressed" in this Agreement do not include those response costs or response actions as to which EPA has reserved its rights under this Agreement (except for claims for failure to comply with this Agreement), in the event that EPA asserts rights against Settling Party coming within the scope of such reservations.

28. In any subsequent administrative or judicial proceeding initiated by the United States for injunctive relief, recovery of response costs, or other relief relating to the Site, Settling Party shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, *res judicata*, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States in the subsequent proceeding were or should have been addressed in this Agreement; provided, however, that nothing in this Paragraph affects the enforceability of the Covenant Not to Sue by EPA set forth in Section IX.

XIV. SITE ACCESS

29. Commencing upon the effective date of this Agreement, Settling Party agrees to provide EPA and its representatives and contractors access at all reasonable times to the Site and to any other property owned or controlled by Settling Party to which access is determined by EPA to be required for the implementation of this Agreement, or for the purpose of conducting any response activity related to the Site, including but not limited to:

- a. Monitoring, investigation, removal, remedial or other activities at the Site;
- b. Verifying any data or information submitted to EPA;
- c. Conducting investigations relating to contamination at or near the Site;
- d. Obtaining samples; and
- e. Assessing the need for, planning, or implementing response actions at or near the Site.

30. Notwithstanding any provision of this Agreement, EPA retains all of its access authorities and rights, including enforcement authorities related thereto, under CERCLA, RCRA, and any other applicable statutes or regulations.

XV. CERTIFICATION

31. Settling Party hereby certifies that, to the best of its knowledge and belief, after thorough inquiry, it has:

- a. not altered, mutilated, discarded, destroyed or otherwise disposed of any records, reports, or information relating to its potential liability regarding the Site since notification of potential liability by the United States or the state or the filing of a suit against it regarding the Site and that it has fully complied with any and all EPA requests for documents or information regarding the Site and Settling Party's financial circumstances pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e), or Section 3007 of RCRA, 42 U.S.C. § 6927;

- b. submitted to EPA Financial Information that fairly, accurately, and materially sets forth its financial circumstances, and that those circumstances have not materially changed between the time the Financial Information was submitted to EPA and the time Settling Party executes this Agreement; and

- c. fully disclosed the existence of any insurance policies that may cover claims relating to cleanup of the Site.

XVI. NOTICES AND SUBMISSIONS

32. Whenever, under the terms of this Agreement, notice is required to be given or a document is required to be sent by one Party to another, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other Party in writing. Written notice as specified herein shall constitute complete satisfaction of any written notice requirement of this Agreement with respect to EPA and Settling Party.

As to EPA: Site Attorney
Intermountain Waste Oil Refinery NPL Site
Mail Code: 8ENF-L
U.S. Environmental Protection Agency,
Region 8
999 18th Street, Suite 300
Denver, Colorado 80202

Remedial Project Manager
Intermountain Waste Oil Refinery NPL Site
Mail Code: 8EPR-SR
U.S. Environmental Protection Agency,
Region 8
999 18th Street, Suite 300
Denver, Colorado 80202

As to Settling Party:

Intermountain Oil Company
c/o Corwyn Winegar
111 West 500 North
Logan, Utah 84321

XVII. INTEGRATION/APPENDICES

33. This Agreement and its appendices constitute the final, complete and exclusive agreement and understanding between the Parties with respect to the settlement embodied in this Agreement. The Parties acknowledge that there are no representations, agreements, or understandings relating to the settlement other than those expressly contained in this Agreement. The following appendix is attached to and incorporated into this Agreement:

Appendix A is a map of the Site.

XVIII. PUBLIC COMMENT

34. This Agreement shall be subject to a public comment period of not less than 30 days pursuant to Section 122(i) of CERCLA, 42 U.S.C. § 9622(i). In accordance with Section 122(i)(3) of CERCLA, the United States may modify or withdraw its consent to this Agreement if comments received disclose facts or considerations which indicate that this Agreement is inappropriate, improper, or inadequate.

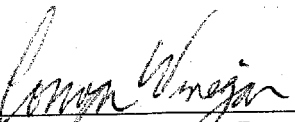
XIX. EFFECTIVE DATE

35. The effective date of this Agreement shall be the date upon which EPA issues written notice that the public comment period pursuant to Paragraph 34 has closed and that

comments received, if any, do not require modification of or withdrawal by the United States from this Agreement.

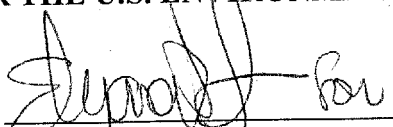
IT IS SO AGREED:

FOR INTERMOUNTAIN OIL COMPANY
A Dissolved Utah Corporation

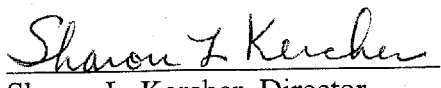
By: 
Corwyn Winegar, President
111 West 500 North
Logan, Utah 84321
435-753-2482

12-16-05
Date

FOR THE U.S. ENVIRONMENTAL PROTECTION AGENCY, REGION 8

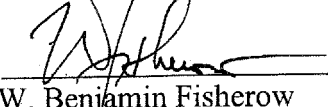
By:  for
Michael Risner, Director
Legal Enforcement Program
Office of Enforcement, Compliance, and Environmental Justice
U.S. Environmental Protection Agency, Region 8

12-20-05
Date

By: 
Sharon L. Kercher, Director
Technical Enforcement Program
Office of Enforcement, Compliance, and Environmental Justice
U.S. Environmental Protection Agency, Region 8

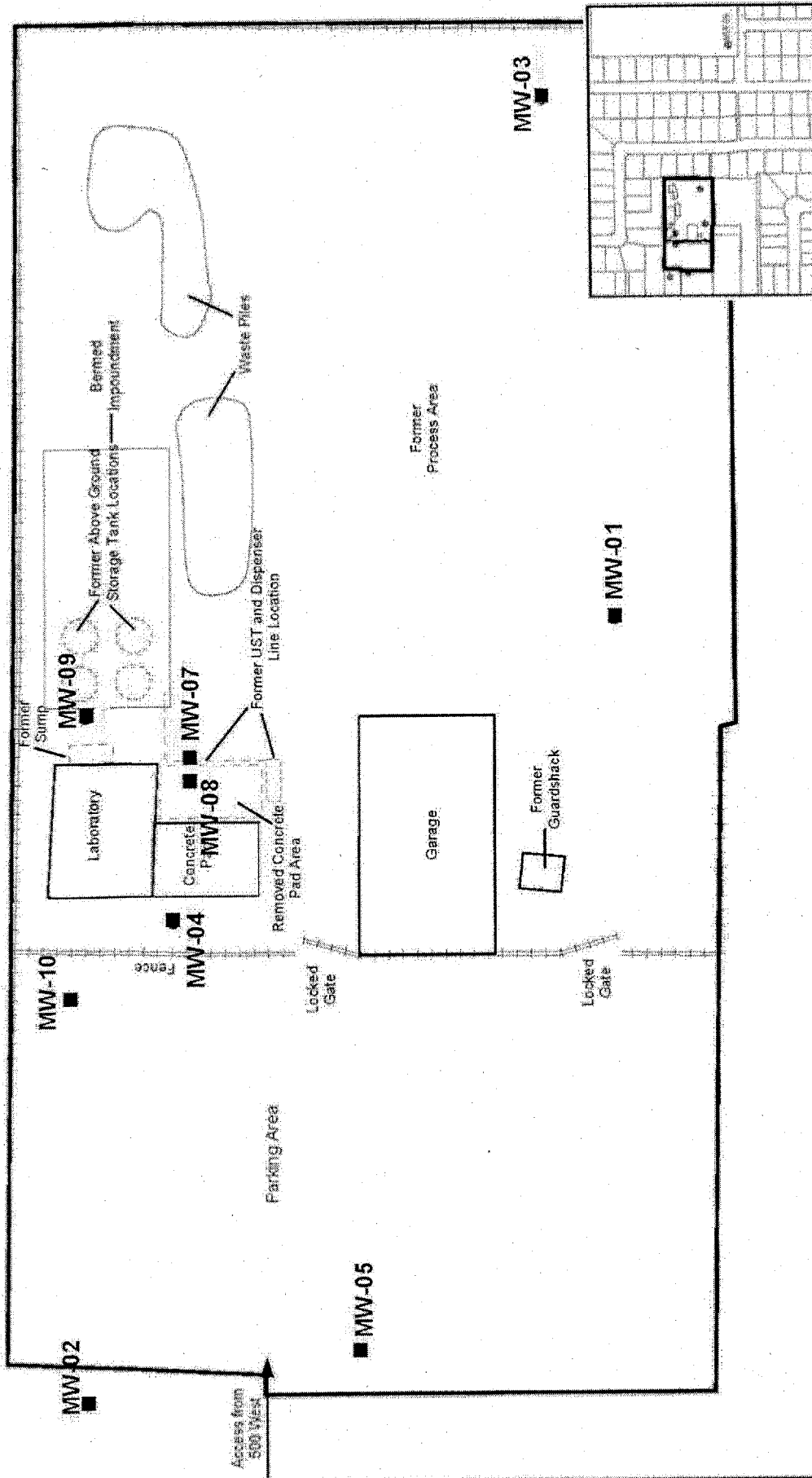
20 December 2005
Date

FOR THE U.S. DEPARTMENT OF JUSTICE

By: 
W. Benjamin Fisherow
Deputy Section Chief,
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
Washington, D.C. 20530

2/22/06
Date

APPENDIX "A"



PCOR Figure 1

Site Feature Map
 WJOR, Bountiful, UT



Legend

- Existing Monitoring Well
- Site Boundary

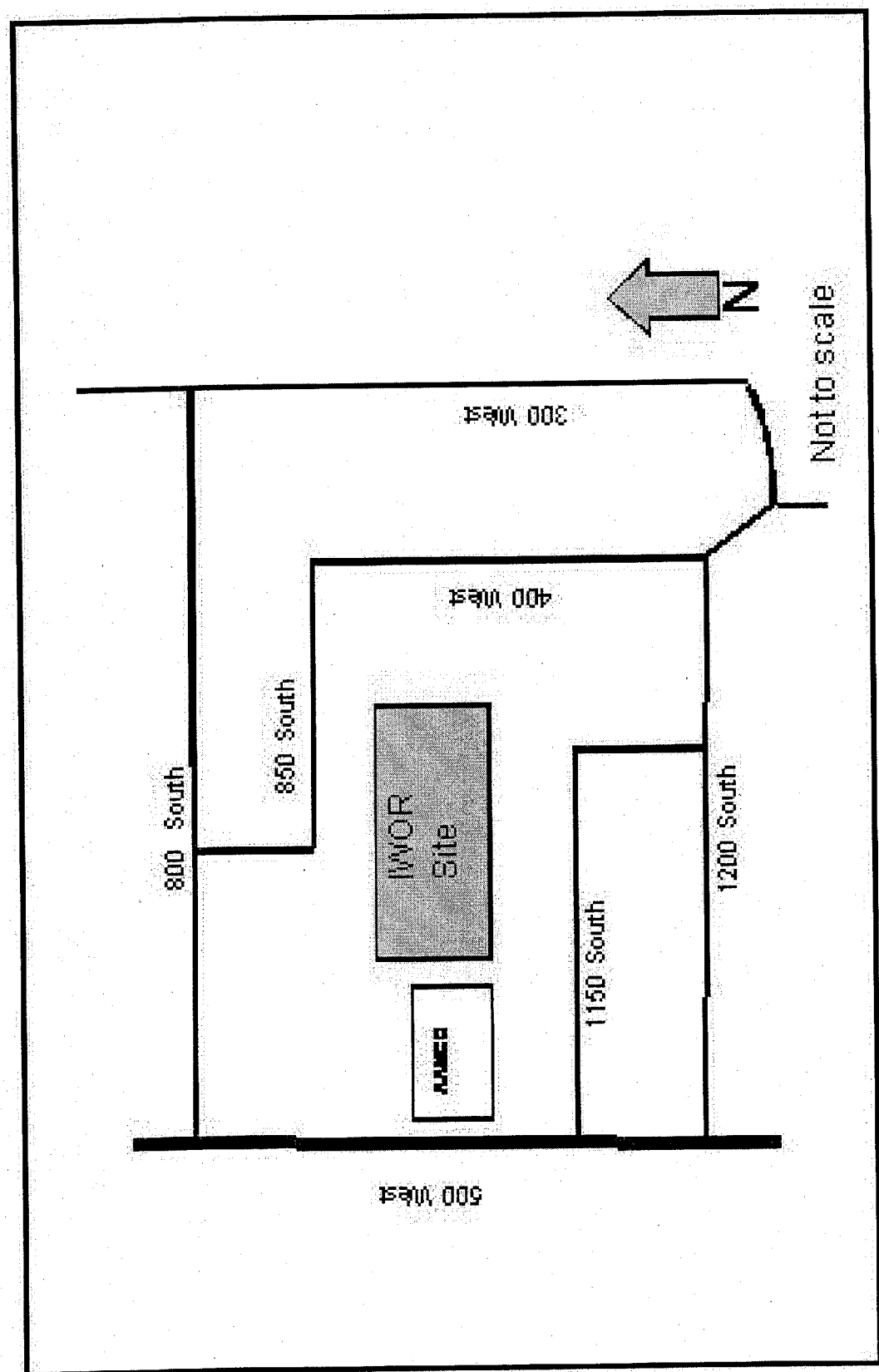


Figure 1: Location of Intermountain Waste Oil Refinery (IWOR) Site in Bountiful, Utah